

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

JOSHUA J. BALDASSARRE,

Case No. 2:24-cv-00574-MMD-DJA

Petitioner,

ORDER

v.

WARDEN BEAN, *et al.*,

Respondents.

Petitioner Joshua J. Baldassarre, a *pro se* Nevada prisoner, commenced this habeas action by filing a Petition for Writ of Habeas Corpus (ECF No. 1-1). This habeas matter is before the Court for initial review under the Rules Governing Section 2254 Cases,¹ as well as consideration of Petitioner's Motion for Appointment of Counsel (ECF No. 2).

Under Habeas Rule 4, the assigned judge must examine the habeas petition and order a response unless it "plainly appears" that the petitioner is not entitled to relief. See *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). This rule allows courts to screen and dismiss petitions that are patently frivolous, vague, conclusory, palpably incredible, false, or plagued by procedural defects. *Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998); *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990) (collecting cases).

Petitioner challenges a conviction and sentence imposed by the Eighth Judicial District Court for Clark County. *State of Nevada v. Joshua Baldassarre*, Case No. C-12-285399-1.² On March 5, 2014, the state court entered a judgment of conviction for one

¹All references to a "Habeas Rule" or the "Habeas Rules" in this order identify the Rules Governing Section 2254 Cases in the United States District Courts.

²The Court takes judicial notice of the online docket records of the Eighth Judicial District Court and Nevada appellate courts. The docket records may be accessed by the

1 count of lewdness with a child under the age of fourteen, two counts of sexual assault,
 2 victim being a vulnerable person, and one count of open or gross lewdness. The state
 3 court sentenced Petitioner to three consecutive terms of life with the possibility of parole
 4 after 10 years in addition to two consecutive enhancements of 6 to 15 years for the victim
 5 being a vulnerable person. The Nevada Supreme Court affirmed the conviction.

6 On September 24, 2015, Petitioner filed a state petition for writ of habeas corpus,
 7 and filed supplemental petitions in December 2015, May 2016, and April 2019, which
 8 were denied. The Nevada Court of Appeals affirmed the denial of relief. On March 25,
 9 2024, Petitioner mailed or handed to a correctional officer for the purpose of filing his
 10 federal petition for writ of habeas corpus. (ECF No. 1-1.) The Court instructed him to
 11 resolve the filing fee, and he timely complied. (ECF Nos. 5, 6.)

12 Turning to Petitioner's motion for appointment of counsel (ECF No. 2) to assist him
 13 in this habeas action, there is no constitutional right to appointed counsel in a federal
 14 habeas corpus proceeding. See *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing
 15 *Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007)). However, an indigent petitioner may
 16 request appointed counsel to pursue that relief. See 18 U.S.C. § 3006A(a)(2)(B). The
 17 decision to appoint counsel is generally discretionary. *Id.* (authorizing appointment of
 18 counsel "when the interests of justice so require"). But counsel must be appointed if the
 19 complexities of the case are such that denial of counsel would amount to a denial of due
 20 process, and where the petitioner is so uneducated that he or she is incapable of fairly
 21 presenting his or her claims. See *La Mere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987);
 22 *Brown v. United States*, 623 F.2d 54, 61 (9th Cir. 1980).

23 The Court finds that appointment of counsel in this case is in the interests of justice.
 24 Petitioner is serving lengthy consecutive sentences. In addition, his petition may raise
 25 relatively complex issues and it is unclear whether he will be able to adequately articulate
 26 his claims in proper person with the resources available to him. Therefore, Petitioner's
 27

28 public online at: <https://www.clarkcountycourts.us/Anonymous/default.aspx> and
 at: <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 motion for appointment of counsel is granted.

2 It is therefore ordered that Petitioner Joshua J. Baldassarre's Motion for
3 Appointment of Counsel (ECF No. 2) is granted.

4 It is further ordered that the Federal Public Defender is provisionally appointed as
5 counsel and will have 30 days to undertake direct representation of Petitioner or to
6 indicate the office's inability to represent Petitioner in these proceedings. If the Federal
7 Public Defender is unable to represent Petitioner, the Court will appoint alternate counsel.
8 The counsel appointed will represent Petitioner in all federal proceedings related to this
9 matter, including any appeals or certiorari proceedings, unless allowed to withdraw. A
10 deadline for the filing of an amended petition and/or seeking other relief will be set after
11 counsel has entered an appearance. The Court anticipates a deadline of approximately
12 90 days from entry of the formal order of appointment.

13 It is further ordered that any deadline established and/or any extension thereof will
14 not signify any implied finding of a basis for tolling during the time period established.
15 Petitioner at all times remains responsible for calculating the running of the federal
16 limitation period and timely presenting claims. That is, by setting a deadline to amend the
17 petition and/or by granting any extension thereof, the Court makes no finding or
18 representation that the petition, any amendments thereto, and/or any claims contained
19 therein are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729 F.3d 1225, 1235
20 (9th Cir. 2013).

21 It is further ordered that the Clerk of Court will file Petitioner Joshua J.
22 Baldassarre's Petition for Writ of Habeas Corpus (ECF No. 1-1).

23 It is further ordered that the Clerk of Court is directed to add Nevada Attorney
24 General Aaron D. Ford as counsel for Respondents and to provide Respondents an
25 electronic copy of all items previously filed in this case by regenerating the Notice of
26 Electronic Filing to the Office of the Attorney General only. Respondents' counsel must
27 enter a notice of appearance within 21 days of entry of this order, but no further response
28 will be required from Respondents until further order of the Court.

It is further ordered that the Clerk of Court is further directed to send a copy of this order to the *pro se* Petitioner, the Nevada Attorney General, the Federal Public Defender, and the CJA Coordinator for this division.

DATED THIS 4th Day of June 2024.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE